BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the Regulation of Telecommunications Utilities.	R.05-04-005 (Filed April 7, 2005)
Rulemaking for the Purposes of Revising General Order 96-A Regarding Informal Filings at the Commission	R.98-07-038 (Filed July 23, 1998

REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF COMMISSIONER CHONG (URF PHASE II)

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REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF COMMISSIONER CHONG (URF PHASE II)

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedures the Division of Ratepayer Advocates (DRA) submits these reply comments on the Proposed Decision (PD) of Commissioner Chong, mailed July 23, 2007, on Uniform Regulatory Framework (URF) Phase II issues.[1]

I. INTRODUCTION

In their opening comments on the PD, the large incumbent local exchange carriers (ILECs) and other service providers subject to the URF rules seek elimination of the limited consumer protections that the PD would adopt as the URF carriers are allowed to implement selective detariffing and other service changes with little or no review. Here, DRA explains why the Commission should retain and enhance the PD's consumer protections. DRA also responds to the comments of other parties and, where these comments raise issues DRA did not address in its opening comments, identifies DRA's position and any needed changes to the PD.

[1] Several of DRA's comments below are also applicable to the Proposed Decision of Commissioner Chong regarding modifications to the Telecommunications Industry Rules in General Order (GO) 96-B.

II. DISCUSSION

A. The Benefits of Maintaining a Public Record of Historical Rates and Service Conditions Outweigh the Minimal Burden on Service Providers

Several carriers object to the PD's requirement that they maintain a public, online history of service prices and terms.[2] No carrier identified a legitimate legal or factual problem with the PD; hence, the Commission should give no weight to their arguments.

If they have nothing to hide, the carriers' vigorous objections to providing customers ready access to historical service prices and terms are puzzling. Tariff page revision procedures have always provided a record of service changes, albeit one that is manual and hard for consumers to access and use. The tariff revision record of service changes (including rate trends) will vanish with detariffing, but the need for such a record will actually increase. The pace of change, including detariffing is expected to accelerate changes in telecommunications pricing, terms and conditions, thereby increasing customers' need to track service changes.

The PD's proposed online archive fulfills that customer need far more efficiently than would AT&T's suggestion that carriers maintain a comparable record that their representatives can access if and when a customer requests the information.[3] Not only would this approach require more customer effort, the carriers would need to maintain all of the same data that the PD requires that they put online.

Furthermore, carriers' contention that online access to past service rates and terms will be too confusing for customers[4] is a smokescreen. Carriers can easily keep historical information behind a "no longer available" or similar heading and have relevant pages clearly labeled. Should confusion be a significant concern, Internet pages can be set up to require the customer to input an "as of" date so that they are consciously accessing historical data.

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[2] AT&T Opening Comments, 8/13/07, at 7-8; CALTEL Opening Comments, 8/13/07, at 4-5; Sprint Nextel Opening Comments, 8/13/07, at 15; SureWest Opening Comments, 8/13/07, at 6; Verizon Opening Comments, 8/13/07, at 3.

[3] AT&T Opening Comments,8/13/07, at 8.

[4] *Id*.; Verizon Opening Comments, 8/13/07, at 3.

Because DRA recommended keeping a multiple-year archive in its opening brief on detariffing and showed that such conditions were already in place in Colorado,[5] parties had a full opportunity to identify problems with this proposal in their October 13, 2006 reply briefs/comments on detariffing. Carriers failed to make a case in the record that such a requirement is a significant burden and do not even attempt to point to record evidence supporting their claims now.[6] Thus, the Commission cannot rely on their post-record, unsupported claims.

B. Affirmative Customer Notice of Rate Increases and Term Changes – Not Just Passive Customer Assent – Is Essential

Several carriers object to the PD's conclusion that customers are entitled to at least 30-day notice and an option to opt out of term commitments when service providers increase detariffed service rates or impose more restrictive terms and conditions.[7] No party establishes any legal or factual error related to this important consumer protection. Thus, the Commission should reject reargument of this issue.

The Commission should, however, modify the PD to include TURN's suggested clarifications to the customer notice requirement. As TURN shows, absent clarification that notice must be prominent, specific, and acknowledged by the customer, the notice requirement will probably not protect customers as intended.[8] A meaningful 30-day notice requirement for all basic business and residential customers is a minimal and essential protection for customers

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[5] Amended Brief of the Division of Ratepayer Advocates and Disability Right Advocates on Detariffing Issues, 10/13/06, at 16-17.

[6] CALTEL proposes that all business services should be exempt from this requirement. It provides no supporting citation for its proposal, and CALTEL does not appear to have filed comments in the detariffing phase of this proceeding. Should the Commission (improperly) entertain CALTEL's untimely proposal, it should not consider an exemption for basic business services. Similarly, Sprint does not appear to have filed comments in the detariffing phase of the proceeding and identifies no legal, factual or technical error concerning the proposed requirement for CMRS providers to create Internet price lists and maintain their historical prices, terms and conditions online. Sprint Opening Comments, 8/13/07, at 10. The PD's proposed policy is pro-consumer, puts competing providers on an equal footing and should be retained.

[7] AT&T Opening Comments, 8/13/07, at 10-11 (AT&T's objection is specific to business customers); Opening Comments of Cox Communications, Time Warner Telecom of California and XO Communications Services ("Joint Commenters"), 8/13/07, at 3; SureWest Opening Comments, 8/13/07, at 6.

[8] TURN Opening Comments, 8/13/07, at 12.

during the transition from tariffs overseen by the Commission to contracts with minimal oversight. This is particularly critical as service bundles are designed to be "sticky," and it may take some time for customers to find a replacement for detariffed service bundles (if one even exists) when carrier-imposed service changes are not acceptable.

C. Any Change to the Language Excluding Basic Service from Tier 1 Advice Letters Should Wait until after Phase 2 of the CHCF-B Proceeding

AT&T's request to pre-approve Tier 1 rate changes for basic service effective January 1, 2009, is premature.[9] Subsequent to the issuance of this PD, Commissioner Chong's PD in R.06-06-028 has indicated that the Commission may maintain a price cap on residential basic service beyond January 1, 2009.[10] At a minimum, any needed modification to the Commission's Tier 1 advice letter rules related to basic service should wait until after the concurrent CHCF-B rulemaking concludes. Moreover, given the potential complicating effects on universal service, subsidy payments and LifeLine rates, changes to residential basic exchange service may *never* be appropriate for a Tier 1 advice letter filing, even after price caps are finally lifted.

D. Existing Legal Requirements in Tariffs Should Remain

AT&T and SureWest object to the requirement that federal and state mandates should be included in tariffs.[11] Although it would serve no purpose to implement a general requirement for carriers to file new tariff language stating legal and regulatory mandates, it also makes sense to retain any such language that is already in existing tariffs, at least without a *specific* reason for removing it. Such language was originally placed in tariffs for a reason and should not be removed without an explicit review of that reason. Moreover, as most such provisions are likely relate to basic residential service, they will need to remain tariffed regardless. Thus, existing mandates delineated in tariffs should remain unless the carrier makes an affirmative showing to justify removing the tariff language.

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[9] AT&T Opening Comments, 8/13/07, at 12.

[10] R.06-06-028, Proposed Decision of Commissioner Chong, mailed 8/3/07, at 9.

[11] AT&T Opening Comments, 8/13/07, at 6-7; SureWest Opening Comments, 8/13/07, at 5.

E. SureWest's Proposed Elimination of Grounds for Protest Are Unreasonable and Unsupported

SureWest contends that the Commission should remove requirements that advice letters must be just, reasonable, nondiscriminatory, and appropriate for the advice letter process.[12] SureWest contends that these requirements are "duplicative" of other rules and are too open-ended. These requirements add no new burden (as must be the case if they are "duplicative"). Further, SureWest fails to provide a single example of a situation in which the Commission should approve an advice letter that would fail to meet one of these requirements or record cite supporting its argument. To the contrary, little could be more obvious than that advice letters that are improperly filed or are "unjust, unreasonable, or discriminatory" should be subject to protest. The Commission should ignore SureWest's comments.

F. Discrimination Is Discrimination

SureWest argues that carriers should be allowed to distinguish between contract terms which were "then in effect" when a contract was originally offered to a customer and those that are currently available.[13] This distinction would obviate enforcement of nondiscrimination requirements because a carrier could always claim that any terms offered to one customer yesterday were only available "in the past" and are no longer available today. Therefore, the Commission should not entertain SureWest's proposal.

III. CONCLUSION

For all of the reasons discussed above and in DRA's August 13, 2007 opening comments, DRA respectfully requests that the Commission revise the PD to reflect the changes identified in DRA's opening comments and herein.

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[12] SureWest Opening Comments, 8/13/07, at 7-8.

[13] SureWest Opening Comments, 8/13/07, at 9.

August 20, 2007

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **"REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF COMMISSIONER CHONG (URF Phase II)"** in **R.05-04-005 and R.98-07-038** by using the following service:

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Executed on the 20th day of August, 2007 at San Francisco, California.

/s/ Joanne Lark

Joanne Lark

N O T I C E

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